

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

February 28, 2003

No. 232827

Wayne Circuit Court

LC No. 00-004026

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

HOEKSTRA, J., (*dissenting*).

I respectfully dissent.

The majority concludes that defendant's waiver of his right to counsel was not unequivocal and was not knowing, intelligent and voluntary and, therefore, failed to meet the requirements of *People v Anderson*, 398 Mich 361, 367-368; 247 NW2d 857 (1976). In support of its holding, the majority relies on a part of the record where the trial court, defendant and the prosecutor address defendant's desire to review a portion of the preliminary examination transcript.

From my review of the record, I find that this discussion occurred immediately after the trial court had concluded the waiver of counsel procedure required by *Anderson, supra*, and MCR 6.005(D)(1) and related to how the trial would proceed from that point forward. The discussion began with defendant's request to have certain witnesses that had previously testified recalled. The prosecutor interjected that there was no point in recalling the witnesses, apparently because their preliminary examination testimony was consistent with their trial testimony. Defendant expressed a desire to review the transcripts before proceeding, but the trial court refused to further delay the trial and ordered the jury returned to the courtroom.

At this point the trial court again questioned defendant about his desire to represent himself, and defendant pleaded for more time to review the preliminary examination transcript. It is this exchange between the trial court and defendant upon which the majority focuses, however, it occurred after defendant already had been fully advised of his rights and had stated on the record his unequivocal desire to represent himself. The trial court was not obligated to revisit the issue of defendant's waiver, and the trial court's decision not to grant an adjournment to allow defendant time to review the preliminary examination transcript did not compromise

defendant's previous waiver of counsel. In my opinion, this portion of the transcript has no relevance to the waiver of attorney procedure that preceded this exchange.

Regarding the waiver of counsel procedure itself, the record shows that after indicating dissatisfaction with his attorney's cross-examination of prosecution witnesses, defendant made a clear and unequivocal request to represent himself and also made a motion to have two witnesses brought back for additional questioning. However, the issue of recalling witnesses and defendant's desire for self-representation do not, in my opinion, appear to be linked. The trial court, to the extent that it responded to defendant's request to recall witnesses before recessing, indicated only that the rules of evidence would control that decision. The trial court then recessed the case for ten minutes. Upon reconvening, the trial court addressed defendant directly, asking him if he still desired to represent himself, and defendant responded that he did. The trial court then advised defendant of the risks of self-representation, asked him if his decision was made knowingly, intelligently and voluntarily, to which defendant answered affirmatively, warned him about being disruptive, and informed him of the penalties for the offenses for which he was on trial. Under these circumstances, I find that the trial court fully complied with the requirements of *Anderson, supra* and MCR 6.005(D)(1), and defendant's claim of error is without merit.

/s/ Joel P. Hoekstra